



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Federal Election Commission - Retroactive Career-  
Ladder Promotions

**File:** B-229290

**Date:** June 10, 1988

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### **DIGEST**

The Federal Election Commission is advised that there is no authority to retroactively grant career-ladder promotions withheld for budgetary reasons since their promotion policy is discretionary and a failure to promote would not violate policy, regulations, or a negotiated labor agreement. A federal employee is not entitled to the benefit of a position until he has been duly appointed to it, and the Back Pay Act would not apply where a determination could not be made that an unjustified or unwarranted personnel action occurred.

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### **DECISION**

The Director of Personnel of the Federal Election Commission (FEC), on behalf of the Chairman, has requested our decision on the issue of whether career-ladder promotions withheld for budgetary reasons may be subsequently granted retroactively. For the reasons that follow, we conclude that there is no authority to grant the retroactive promotions.

### **BACKGROUND**

The FEC states that it sometimes faces severe budget cuts and that it must consider a freeze on career-ladder promotions.<sup>1/</sup> The FEC is concerned about the issue of retroactive promotions since budget shortfalls early in the fiscal year are sometimes worked out to the extent that funds become available later to lift the freeze and fund retroactive promotions.

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<sup>1/</sup> A career-ladder promotion is described as the noncompetitive promotion of an employee through intervening grade levels to the full performance level in an established career ladder, e.g., GS-5/7/9.

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The FEC admits that its research has revealed no authority for the retroactive promotions. However, the FEC has urged favorable consideration of their request because of the morale factor involved and because the individuals will in fact be performing duties at the higher grade levels. Further, the FEC argues it is difficult to make clear distinctions between grade GS-5 and grade GS-7 level work in a professional, career-ladder situation.

#### OPINION

Our decisions have held that, as a general rule, a personnel action may not be made retroactive so as to increase the rights of an employee to compensation. We have made exceptions to this rule where administrative or clerical error (1) prevented an approved personnel action from being effected as originally intended, (2) violated nondiscretionary administrative regulations or policies, or (3) deprived the employee of a right granted by statute or regulation. Agnes Mansell, 64 Comp. Gen. 844 (1985); Douglas C. Butler, 58 Comp. Gen. 51 (1978).

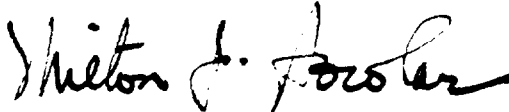
None of the above exceptions would apply in this case since the FEC does not have a nondiscretionary promotion policy or regulation, nor does it have a negotiated labor agreement which provides for promotions automatically. In fact, the FEC/NTEU Labor Agreement specifically states in section 14B that career-ladder promotions are not automatic at the end of the time-in-grade period. The Agreement merely states that, whenever practicable, an employee shall be promoted effective the first pay period after all of certain conditions, including budget considerations, are met. See John Cahill, 59 Comp. Gen. 59 (1978).

A federal employee is not entitled to the benefit of a position until he has been duly appointed to it, and the employee is entitled to receive only the salary of the position to which he was appointed, even though he may have performed the duties of another position or claims that he should have been placed in a higher grade. United States v. Testan, 424 U.S. 392, at 402, 406 (1976). Thus, the fact that the employees may be performing work at a higher level would not entitle them to a higher rate of pay until such time as they are actually promoted.

The Back Pay Act, 5 U.S.C. § 5596(b) (1982), authorizes retroactive recovery of wages whenever a federal employee has undergone an unjustified or unwarranted personnel action that has resulted in the withdrawal or reduction of all or a part of the compensation to which the employee is otherwise entitled. However, since FEC's promotion policy is

discretionary, an appropriate authority could not make a determination that an unjustified or unwarranted personnel action occurred so as to warrant backpay. See 5 C.F.R. § 550.804 (1988). Further, the Back Pay Act does not apply to wrongful classification claims. Testan, supra, at 405.2/

Accordingly, there is no authority to grant retroactive promotions under the circumstances presented.

*for*   
Comptroller General  
of the United States

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2/ The FEC is also advised that the same principles outlined above would apply to quality step increases under 5 U.S.C. § 5336 (1982), since they are also granted under discretionary authority.